

## **MINUTES**

### **Ad Hoc Committee on Probate Law and Procedure**

Administrative Office of the Courts

450 South State Street

Salt Lake City, Utah 84114-0241

August 15, 2008 - 12:00p.m.

#### **ATTENDEES**

Kent Alderman  
Mary Jane Ciccarello  
Judge George Harmond  
Maureen Henry  
Marianne O'Brien  
Julie Rigby  
Kathy Thyfault

#### **EXCUSED**

Kerry Chlarson  
Judge Reese Hanson  
Justice Richard Howe  
Steve Mikita  
Judge Gary Stott

#### **STAFF**

Diana Pollock  
Tim Shea

#### **GUESTS**

Becky Allred  
Tom Christensen

### **I. WELCOME AND APPROVAL OF MINUTES**

Judge Harmond welcomed the committee members to the meeting. There were two corrections to the minutes from the previous meeting. With those corrections the minutes were approved unanimously.

Judge Harmond welcomed Becky Allred and Tom Christensen to the meeting. Ms. Allred and Mr. Christensen have experience with conservatorship issues and will be discussing them with the committee.

At the end of the previous meeting, Mr. Shea asked the committee to think about whether there is a reason, or not, to adopt for conservatorships any of the principles that the committee has adopted for guardianships.

### **II. CONSERVATORSHIPS**

#### **Grounds**

- A mental incapacity requirement should included, but not be required to establish a conservatorship.
- Very often conservators are appointed because the ward cannot manage his or her financial affairs, the ward requests a conservator, or the ward is confined or missing.

- Some people use a living trust or trust arrangement without court involvement because it is less expensive, less onerous and less oversight while accomplishing the same thing.
- The volunteer program for monitoring should extend to conservators.
- Protective orders include a fairly extensive list of authority that the judge has over the estate. The district court judges will not have sufficient time for this type of direct oversight.
- The guardianship reforms should generally be the same language as for a conservator, however, do not do away with the protective order provisions.
- Inability to manage one's finances should be sufficient for a conservatorship.
- Use the proposed incapacity language for establishing a conservatorship. Add language for "confinement," "detention," "disappearance," or "voluntary request."
- Keep the provision to the effect that a judge can appoint a conservator if there is a person entitled to be supported by the protected person.
- The conservator's authority should be limited, as we have done with guardians.

### **Venue**

- This includes where the respondent might not be a resident of Utah but owns property in Utah.
- If there is an appointment in another state, Utah would honor in under full faith and credit, and there would be no need for a new petition.
- There is a shortcut method under the Probate Code to accept letters issued in another state and bringing them to Utah to be recorded.
- This is primarily a title company issue.

### **Appointment of a Lawyer**

- Unless the person to be protected has counsel of his own choice, the court should appoint counsel to represent him, just like in guardianships.

### **Examination**

- If incapacity is the grounds for the appointment, there is no difference between the guardian and conservator in this process.
- If a person's incapacity is not the grounds for the appointment, there does not need to be a medical determination.

### **Visitor**

- The court can appoint a visitor.

- Helpful to have the court visitor in a conservatorship be a person with financial expertise.

### **Emergency Conservator**

- No current provision in the conservatorship statute.
- The court should be able to appoint in an emergency
- When appointed, the conservator would have the authority to find out what the asset situation is.
- Order from court freezing the assets of the protected person with a deadline.
- The authority is limited to what is expressly authorized in the court order.

### **Evidentiary Standard**

- Clear and convincing evidence is an appropriate standard, even if the grounds are confinement, missing or a voluntary request.

The meeting adjourned at 2:30 p.m.